

this section is mandatory beginning on January 1, 1995.

[54 FR 53259, Dec. 27, 1989; 55 FR 22793, June 4, 1990, as amended at 59 FR 7459, Feb. 15, 1994; 62 FR 63466, Dec. 1, 1997]

§219.105 Railroad's duty to prevent violations.

(a) A railroad may not, with actual knowledge, permit an employee to go or remain on duty in covered service in violation of the prohibitions of §219.101 or §219.102. As used in this section, the knowledge imputed to the railroad shall be limited to that of a railroad management employee (such as a supervisor deemed an "officer," whether or not such person is a corporate officer) or a supervisory employee in the offending employee's chain of command.

(b) A railroad must exercise due diligence to assure compliance with §219.101 and §219.102 by each covered employee.

§219.107 Consequences of unlawful refusal.

(a) An employee who refuses to provide breath or a body fluid sample or samples when required to by the railroad under a mandatory provision of this part shall be deemed disqualified for a period of nine (9) months.

(b) Prior to or upon withdrawing the employee from covered service under this section, the railroad shall provide notice of the reason for this action, and the procedures described in §219.104(c) shall apply.

(c) The disqualification required by this section shall apply with respect to employment in covered service by any railroad with notice of such disqualification.

(d) The requirement of disqualification for nine (9) months does not limit any discretion on the part of the railroad to impose additional sanctions for the same or related conduct.

(e) Upon the expiration of the 9-month period described in this section, a railroad may permit the employee to return to covered service only under the same conditions specified in §219.104(d), and the employee shall be subject to follow-up tests, as provided by that section.

[59 FR 7460, Feb. 15, 1994]

Subpart C—Post-Accident Toxicological Testing

§219.201 Events for which testing is required.

(a) *List of events.* Except as provided in paragraph (b) of this section, post-accident toxicological tests shall be conducted after any event that involves one or more of the circumstances described in paragraphs (a) (1) through (4) of this section:

(1) *Major train accident.* Any train accident (*i.e.*, a rail equipment accident involving damage in excess of the current reporting threshold, \$6,300 for calendar years 1991 through 1996, \$6,500 for calendar year 1997, and \$6,600 for calendar years 1998 through 1999) that involves one or more of the following:

(i) A fatality;

(ii) Release of hazardous material lading from railroad equipment accompanied by—

(A) An evacuation; or

(B) A reportable injury resulting from the hazardous material release (*e.g.*, from fire, explosion, inhalation, or skin contact with the material); or

(iii) Damage to railroad property of \$1,000,000 or more.

(2) *Impact accident.* An impact accident (*i.e.*, a rail equipment accident defined as an "impact accident" in §219.5 of this part that involves damage in excess of the current reporting threshold, \$6,300 for calendar years 1991 through 1996, \$6,500 for calendar year 1997, and \$6,600 for calendar years 1998 through 1999) resulting in—

(i) A reportable injury; or

(ii) Damage to railroad property of \$150,000 or more.

(3) *Fatal train incident.* Any train incident that involves a fatality to any on-duty railroad employee.

(4) *Passenger train accident.* Reportable injury to any person in a train accident (*i.e.*, a rail equipment accident involving damage in excess of the current reporting threshold, \$6,300 for calendar years 1991 through 1996, \$6,500 for calendar year 1997, and \$6,600 for calendar years 1998 through 1999) involving a passenger train.

(b) *Exceptions.* No test shall be required in the case of a collision between railroad rolling stock and a